



Billing Code 8025-01

SMALL BUSINESS ADMINISTRATION

Small Business Size Standards: Class Waiver of the Nonmanufacturer Rule

AGENCY: U.S. Small Business Administration.

ACTION: Notice of Intent to Waive the Nonmanufacturer Rule for Positive Airway Pressure Devices and Supplies Manufacturing

SUMMARY: The U.S. Small Business Administration (SBA) is considering granting a request for a class waiver of the Nonmanufacturer Rule (NMR) for Positive Airway Pressure Devices and Supplies Manufacturing. This U.S. industry comprises establishments primarily engaged in manufacturing Continuous Positive Airway Pressure (CPAP) devices, Bi-level Positive Airway Pressure (BiPAP) devices, and other products intended to treat sleep apnea by keeping a person's airways open during sleep. According to the request, no small business manufacturers supply this product to the Federal government. If granted, the class waiver would allow otherwise qualified regular dealers to supply the product of any manufacturer on a Federal contract set aside for small business, service-disabled veteran-owned small business (SDVOSB), women-owned small business (WOSB), economically disadvantaged women-owned small business (EDWOSB), or participants in the SBA's 8(a) Business Development (BD) program.

DATES: Comments and source information must be submitted by [INSERT DATE 30 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: You may submit comments and source information via the Federal Rulemaking Portal at <https://www.regulations.gov> under Docket ID SBA-2017-0006. If you wish to submit confidential business information (CBI) as defined in the User Notice

at <http://www.regulations.gov>, please submit the information to Roman Ivey, Program Analyst, Office of Government Contracting, U.S. Small Business Administration, 409 Third Street SW, 8th Floor, Washington, DC 20416, and highlight the information that you consider to be CBI and explain why you believe this information should be held confidential. SBA will review the information and make a final determination as to whether or not the information will be published.

FOR FURTHER INFORMATION CONTACT: Roman Ivey, Program Analyst, by telephone at 202-401-1420; or by email at roman.ivey@sba.gov.

SUPPLEMENTARY INFORMATION: Section 8(a)(17) and 46 of the Small Business Act (Act), 15 U.S.C. 637(a)(17) and 657, and SBA's implementing regulations require that recipients of Federal supply contracts (except those valued between \$3,500 and \$150,000) set aside for small business, service-disabled veteran-owned small business (SDVOSB), women-owned small business (WOSB), economically disadvantaged women-owned small business (EDWOSB), or participants in the SBA's 8(a) Business Development (BD) program provide the product of a small business manufacturer or processor, if the recipient is other than the actual manufacturer or processor of the product. This requirement is commonly referred to as the Nonmanufacturer Rule (NMR). 13 CFR 121.406(b). Sections 8(a)(17)(B)(iv)(II) and 46(a)(4)(B) of the Act authorize SBA to waive the NMR for a "class of products" for which there are no small business manufacturers or processors available to participate in the Federal market.

As implemented in SBA's regulations at 13 CFR 121.1202(c), in order to be considered available to participate in the Federal market for a class of products, a small

business manufacturer must have submitted a proposal for a contract solicitation or been awarded a contract to supply the class of products within the last 24 months.

The SBA defines “class of products” based on a combination of 1) the six digit North American Industry Classification System (NAICS) code, 2) the four digit Product Service Code (PSC), and 3) a description of the class of products.

The SBA is currently processing a request to waive the NMR for Positive Airway Pressure Devices and Supplies under NAICS codes 339112 and 339113, PSC 6515. The public is invited to comment or provide source information on any small business manufacturers of this class of products that are available to participate in the Federal market. The public comment period will run for 30 days after the date of publication in the Federal Register.

More information on the NMR and Class Waivers can be found at <https://www.sba.gov/contracting/contracting-officials/non-manufacturer-rule/non-manufacturer-waivers>.

Dated: September 6, 2017.

Seán F. Crean,
Director, Office of Government Contracting.

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